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SINCERE ORIENT COMMERCIAL  
CORPORATION, a California  
corporation,

Plaintiff,

v.

CITY OF INDUSTRY, SUCCESSOR  
AGENCY TO THE INDUSTRY  
URBAN-DEVELOPMENT  
AGENCY, California unit of local  
government; FOX LUGGAGE, INC. a  
California corporation; and DOES 1  
through 50, inclusive,

Defendants.

CASE No.: 2:17-CV-04755-PSG-RAO

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF MOTION TO SET  
ASIDE ENTRY OF DEFAULT  
FOR DEFENDANT FOX  
LUGGAGE, INC.**

Assigned to Hon. Philip S. Gutierrez

## **TABLE OF CONTENTS**

I.	INTRODUCTION .....	1
II.	STATEMENT OF FACTS AND PROCEDURAL HISTORY .....	1
III.	ARGUMENT.....	2
	A. DEFENDANT'S DELAY IN RESPONSE WAS NOT CULPABLE.....	2
	B. DEFENDANT HAS A MERITORIOUS RESPONSE TO THE LAWSUIT .....	3
	C. PLAINTIFF WILL NOT SUFFER PREJUDICE .....	4
IV.	CONCLUSION .....	4

## **TABLE OF AUTHORITIES**

## Cases

4	<i>Audio Toys, Inc. v. Smart AV Pty Ltd.</i> , 2007 U.S. Dist. LEXIS 44078 (N.D. Cal. June 6, 2007).....	3, 4
5		
6	<i>Bateman v. United States Postal Service</i> , 231 F.3d 1220 (9th Cir. 2000).....	4
7		
8	<i>Bonita Packing Co. v. O'Sullivan</i> , 165 F.R.D. 610 (C.D. Cal. 1995).....	2
9		
10	<i>Franchise Holding II, LLC v. Huntington Rests. Group, Inc.</i> , 375 F.3d 922 (9th Cir. 2004).....	2
11		
12	<i>Hawaii Carpenters' Trust Funds v. Stone</i> , 794 F.2d 508 (9th Cir. 1986).....	3
13		
14	<i>Meadows v. Dominican Republic</i> , 817 F.2d 517 (9th Cir. 1987).....	2
15		
16	<i>TCI Group Life Ins. Plan v. Knoebber</i> , 244 F.3d 691 (9th Cir. 2001).....	2
17		
18		

## Statutes

20	Fed. R. Civ. P. 55(c).....	1, 2, 5
21	Fed. R. Civ. P. 60(b)(1).....	2

1       **I. INTRODUCTION**

2       This court should set aside the entry of default against Defendant Fox  
 3 Luggage, Inc. (“Defendant” or “Fox Luggage”) pursuant to Fed. R. P. 55(c)  
 4 because there is good cause for Defendant’s delay in appearing in this action.  
 5 Defendant’s counsel has repeatedly contacted Plaintiff’s counsel for meet and  
 6 confer conference prior to the filing of this Motion. (Decl. of Gary Wang ¶¶ 2, 3, 4,  
 7 5, 6, 7, 8, and 9.) Defendant’s counsel has not received an electronic message,  
 8 phone call, or any other correspondence from Plaintiff’s counsel since November 9,  
 9 2017. (Decl. of Gary Wang ¶ 10.) Despite repeated attempts via multiple channels  
 10 of communication to contact Plaintiff’s counsel to meet and confer regarding the  
 11 motion to set aside default, Defendant’s counsel has been unable to reach Plaintiff’s  
 12 counsel. (Id.)

13       **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

14       Plaintiff e-filed the Complaint in U.S. District Court, Central District of  
 15 California, on June 27, 2017. (Dkt. 1). To the best of Fox Luggage’s knowledge,  
 16 service of Summons and the First Amended Complaint in this action were made on  
 17 Fox Luggage’s agent of service, Grace Chin, at 821 S. Garfield Ave. #201,  
 18 Alhambra, CA 91801, on or about September 20, 2017. (Decl. of Defendant ¶2.)  
 19 Grace Chin indicated she received the complaint on or about September 20, 2017.  
 20 (Decl. of Defendant ¶ 3a.) Ms. Chin has asserted she believed she put the  
 21 documents in an envelope and mailed them via regular mail to Fox Luggage. (Decl.  
 22 of Defendant ¶ 3a.)

23       On October 16, 2017, Judge Philip S. Gutierrez entered the Court’s Order  
 24 Extending Time for Filing Responsive Pleading, thereby extending the deadline to  
 25 respond to the First Amended Complaint from October 16, 2017 to November 15,  
 26 2017. (Dkt. 14.) On October 26, 2017, Plaintiff Sincere Orient Commercial  
 27 Corporation filed a Request to Enter Default.

28       On or about November 2, 2017, Fox Luggage received a letter from Ms. Chin

1 via regular USPS mail containing the Request for Entry of Default, which Ms. Chin  
 2 had received from the Plaintiff. (Decl. of Defendant ¶ 3b.) It was at this time that  
 3 the president of Fox Luggage Inc., Wayne Wang, first learned of the suit. Mr.  
 4 Wang retained counsel on behalf of Fox Luggage shortly thereafter. Counsel  
 5 contacted Plaintiff's counsel on or about November 7, 2017 to meet and confer  
 6 regarding the filing of a motion to set aside default. (Decl. of Gary Wang ¶ 2.)  
 7 Plaintiff's counsel acquiesced to the proposed motion to set aside default, at which  
 8 point Fox Luggage's counsel prepared this memorandum and the Motion to Set  
 9 Aside Entry of Default Against Defendant Fox Luggage, Inc. filed herewith.

### 10 **III. ARGUMENT**

11 Federal Rule of Civil Procedure 55(c) provides that an entry of default may  
 12 be set aside upon showing of good cause. Fed. R. Civ. P. 55(c). While the standard  
 13 for setting aside entry of default under Rule 55(c) is the same as setting aside  
 14 default judgment under Rule, the test for setting aside entry of default is less rigid  
 15 and more generous to the party in default. *Franchise Holding II, LLC v. Huntington*  
 16 *Rests. Group, Inc.*, 373 F.3d 922, 925 (9th Cir. 2004).

17 Three factors must be considered when deciding to set aside default: (1)  
 18 whether defendant's culpable conduct led to the default; (2) whether the defendant  
 19 has a meritorious defense; and (3) whether setting aside default would prejudice the  
 20 plaintiff. *Id.* at 925-26. Furthermore, “[t]he law does not favor defaults,” and “any  
 21 doubts as to whether a party is in default should be decided in favor of the  
 22 defaulting party.” *Bonita Packing Co. v. O'Sullivan*, 165 F.R.D. 610, 614 (C.D.  
 23 Cal. 1995).

#### 24 **A. Defendant's Delay in Response was Not Culpable**

25 Analysis of “culpability” for the purposes of demonstrating good cause under  
 26 Rule 55(c) overlaps with the standard for “excusable neglect” under Rule 60(b)(1).  
 27 *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001); *see also*  
 28 *Meadows v. Dominican Republic*, 817 F.2d 517, 522 (9th Cir. 1987) (finding

1 conduct of defendants in district court was culpable because defendants were aware  
 2 of federal law, and their *intentional* failure to respond to the action was not  
 3 excusable neglect). The Ninth Circuit finds a negligent failure to respond excusable  
 4 if the defaulting party offers a credible, good-faith explanation for the delay that  
 5 negates “any intention to take advantage of the opposing party, interfere with  
 6 judicial decision-making, or otherwise manipulate the legal process.” *Knoebber*,  
 7 244 F.3d at 697-98. Further, in analyzing culpability, the Court may consider a  
 8 defendant’s exigent personal matters, his mental state, and his lack of familiarity  
 9 with legal matters. *See id.* at 699 (finding defendant’s delay in response not  
 10 culpable because she was grieving the death of her husband and was not familiar  
 11 with the legal system).

12 While Defendant did not file a response with the Court in time, Defendant’s  
 13 conduct was excusable because Wayne Wang, President of Fox Luggage, Inc., did  
 14 not receive the complaint mailed by Agent for Service of Process Grace Chin on or  
 15 about September 20, 2017. (Decl. of Defendant ¶ 3a.) Defendant did not become  
 16 aware of the suit until Mr. Wayne received a letter from Grace Chin on or about  
 17 November 2, 2017, containing the Request for Entry of Default from the plaintiff.  
 18 (Decl. of Defendant ¶ 3b.) Defendant confirmed lack of receipt of the complaint by  
 19 verifying with Fox Luggage staff that no such documents were received. (Decl. of  
 20 Defendant ¶ 3c.)

21 **B. Defendant Has a Meritorious Response to the Lawsuit**

22 A defense is considered meritorious if “there is some possibility that the  
 23 outcome of the suit after a full trial will be contrary to the result achieved by the  
 24 default.” *Hawaii Carpenters’ Trust Funds v. Stone*, 794 F.2d 508, 513 (9th Cir.  
 25 1986). All that is required is an assertion of “a factual or legal basis that is sufficient  
 26 to raise a particular defense; the question of whether a particular factual allegation  
 27 is true is resolved at a later stage.” *Audio Toys, Inc. v. Smart AV Pty Ltd.*, 2007 U.S.  
 28 Dist. LEXIS 44078, \*8 (N.D. Cal. June 6, 2007).

1           At this time Defendant plans to assert multiple affirmative defenses, while  
 2 reserving the right to assert any and all additional defenses the bases of which may  
 3 be discovered during the course of discovery. These affirmative defenses include  
 4 but are not limited to: failure to state a claim upon which relief can be granted,  
 5 complaint barred by doctrine of unclean hands, complaint barred by the statute of  
 6 limitations, invalid patents, defective legal theory, the doctrine of acquiescence, and  
 7 innocent infringement pursuant to 15 U.S.C. § 1114(2)(A).

8           If Defendant prevails on these defenses, the outcome would be contrary to  
 9 the result achieved by default. Therefore, Defendant has set forth a meritorious  
 10 defense and satisfies the second good cause factor.

### 11           C. Plaintiff Will Not Suffer Prejudice

12           Prejudice is determined by whether a party will be hindered in pursuing its  
 13 claim. *See Knoebber*, 244 F.3d at 701. The fact that a party may be denied a quick  
 14 victory is not sufficient to deny relief from default judgment. *Bateman v. United*  
 15 *States Postal Service*, 231 F.3d 1220, 1225 (9th Cir. 2000). “The delay must result  
 16 in tangible harm such as loss of evidence, increased difficulties of discovery, or  
 17 greater opportunity for fraud or collusion.” *Audio Toys*, 2007 U.S. Dist. LEXIS at  
 18 \*9.

19           Allowing the case to move forward on the merits after only a short delay  
 20 should not prejudice Plaintiff’s ability to litigate its case. The only prejudice that  
 21 might result to Plaintiff by a denial of default judgment is that Plaintiff will not be  
 22 able to ensure an easy victory. As no prejudice will result to Plaintiff in reopening  
 23 this case, the third and final good cause factor is satisfied.

### 24           IV. Conclusion

25           Defendant is ready and willing to litigate this lawsuit. Defendant’s delay in  
 26 responding was not culpable, Defendant has meritorious defenses, and Plaintiff will  
 27 not suffer any prejudice in pursuing its claims if default is set aside. Based on these  
 28

1 reasons, Defendant has met the good cause standard of Rule 55(c) and this Court  
2 should grant Defendant's motion to set aside the entry of default.

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4 Respectfully submitted,

5 LAW OFFICES OF GARY F. WANG

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7 Dated: November 22, 2017

By: /s/ Gary F. Wang

8 Gary F. Wang  
9 Attorney for Defendant  
10 Fox Luggage, Inc.

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